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ABSTRACT

The paper recounts the background of Wyatt v Stickney, which resulted in a landmark decision establishing a constitutional right to treatment for mentally retarded persons. Events which triggered the Wyatt litigation include an employee action brought about by staff in an effort to obtain re-employment. The involvement of the American Association on Mental Deficiency in the case is discussed, and testimony of AAMD's then-president is excerpted. Court rulings in the case, the appointment of a master, and promulgation of standards comprising minimum constitutional requirements for adequate habilitation of the mentally retarded are described. Subsequent reopening of the case to determine compliance is said to have focused on the guarantee of habilitation rather than merely an enriched environment. Further court action in the case is summarized, and changes in the state facility organization, institutional population, per diem expenses, and staff to resident ratios are noted. (CL)

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Wyatt v Stickney: 10 Years in Review-- Past, Present and Future

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Mrs. Gassman, Mr. Blatt, fellow panelists, and fellow colleagues of AAMD. It is of significance that a review of the Wyatt v. Stickney litigation be presented to this distinguished organization. AAMD has had a long history of involvement in the Wyatt litigation. AAMD was an amicus in the original litigation, although, it is no longer represented as such. Also of interest is the realization by this organization of the numerous deficiencies at Partlow State School and Hospital almost five years prior to the actual litigation.

In 1952, AAMD first published the report of a committee on standards for institutions serving the mentally retarded entitled, The Standards Brochure. In 1959, AAMD's Project on Technical Planning in Mental Retardation undertook a study of public residential facilities for the mentally retarded. The project resulted in a set of standards entitled,

Standards for State Residential Institutions for the Mentally Retarded.

A grant by the Mental Retardation Branch of the United States Public Health Service in 1965 funded the development of an evaluation instrument based on these standards. In 1966 a second grant funded an evaluation project of 134 residential facilities for the mentally retarded. Partlow was included in this group and was surveyed in 1967.

The report of the evaluation project's review team highlighted many deficiencies that were to be detailed later in the Wyatt litigation. It was noted in the AAMD report that only one year prior, a law was passed establishing a Department of Mental Health which included a Division of Mental Retardation. It was noted that per diems at Partlow were $3.25 per resident per day. There were 646 staff or a staff-to-resident ratio of 3.55 residents to each staff member. There were 2300 residents residing in the facility which resulted in severe overcrowding.

Staff turnover was approaching 70% per year.

These figures may appear striking to some, and many may wonder how Alabama permitted its only facility for the mentally retarded to be operated as such; however, closer scrutiny of national statistics shows that Partlow was the rule and not the exception. In 1967 there were more than 193,000 mentally retarded individuals in public residential facilities for the mentally retarded throughout the United States. Most states had a single, centrally located facility for their mentally retarded population. More than 79% of these facilities housed more than 500 individuals. Annual maintenance costs were approximately $3,985 or $10.85 per resident per day. There were approximately two residents to each staff member. Based on these national statistics, it can be assumed that AAMD's review team must have noted similar findings in the majority of facilities surveyed.

Although it is always easier to look back on historical events and question actions others took or should have taken, one must still wonder why it took five years for Wyatt to be forthcoming when such a prominent organization such as AAMD had previously detailed such severe deficiencies not only at Partlow but at residential facilities throughout our nation.

However, even more striking than this, was the events which triggered the Wyatt litigation. Known nationally as a landmark decision establishing a constitutional "right to treatment", its inception was not with a suit for the rights of the retarded at all, but rather, the original suit was an employee action. Due to a budget deficit of approximately $500,000 which occurred in 1970, then Commissioner Stonewall Stickney terminated 99 employees, 58 who were professional employees at Bryce Hospital, a state facility for the mentally ill. The original suit was an attempt to obtain reemployment by these employees and only as a tactical move,

was the name Ricky Wyatt, a nephew of an employee and a patient at Bryce, added to the lawsuit which was filed in the United States District Court for the Middle District of Alabama on October 23, 1970. Stickney later admitted: "The fiscal crisis was an opportunity to shake up the staff at Bryce and allow new leadership to emerge, while dramatizing to the Governor, legislature, and citizenry of the miserable conditions in Alabama's mental institutions (1981)." Whatever Stickney's motives, this action only added to the already critical staffing shortages and already deplorable conditions in Alabama's facilities.

It was Judge Frank M. Johnson, Jr. who in reaction to the suit indicated that his primary interest was not in employee claims for reemployment but rather in the welfare of the residents of the facilities. It was these statements which led to a new filing that ultimately would lead to this landmark case. This was to lead to the court reaching its initial

conclusion that mental patients were entitled to protection under the Fourteenth Amendment, and on March 12, 1971, Judge Johnson was to issue his landmark decision. However, it was not until August of 1971 that the petition was extended to include Partlow.

In their petition to the Court, the Plaintiffs requested that the Court promulgate and order implemented minimally acceptable constitutional standards for the functioning of Partlow. Additionally, Plaintiffs requested appointment of a master, a professional advisory committee to oversee implementation of the judicially ordered guidelines, appointment of a Human Rights Committee to protect resident rights, and an injunction against expenditure of state funds for nonessential functions of the state and allocation of these funds to the Department's facilities.

On February 28 and 29, 1972, hearings were conducted on these motions. The testimony of Dr. Philip Roos, then Executive Director for the National

Association for Retarded Children was characteristic of the testimony introduced. Dr. Roos indicated in his testimony: "The conditions I would say are hazardous to psychological integrity, to health, and in some cases even to life. The administration, the physical plants, the programs and the institutions articulation with the community and with the consumers reflect destructive models of mental retardation. They hark back to decades ago when the retarded were misperceived as being sick, as being subhuman organisms. The new concepts in the field of mental retardation are unfortunately not reflected in Partlow as we see it today . . . concepts such as normalization, developmental model in orientation toward mental retardation, the thrust of consumer involvement, the trend toward community orientation and decentralization of services; none of these are clearly in evidence in the facility today." The Department of Mental Health offered no rebuttal to such allegations made and in

fact previously on February 22, 1972, indicated to the Court: "Assuming that such a federal constitutional obligation exists (to habilitation) ..., defendants will not contest the factual accuracy of an ultimate finding . . . that defendants have not met the constitutional obligation to provide adequate care at (Partlow)." Following testimony at the hearing of February 28 and 29, 1972, the Court issued an interim emergency order on March 21, 1972, and found that: "The evidence. . . has vividly and undisputedly portrayed Partlow State School and Hospital as a warehousing institution which, because of its atmosphere of psychological and physical deprivation, is wholly incapable of furnishing (habilitation) to the mentally retarded and is conducive only to the deterioration and the debilitation of the residents. The evidence has reflected further that safety and sanitary conditions at Partlow are substandard to the point of endangering the health and lives of those residing there, that

the wards are grossly understaffed, rendering even simple custodial care impossible, and that overcrowding remains a dangerous problem often leading to serious accidents, some of which have resulted in deaths of residents."

In regard to the request of the plaintiffs and the amici to appoint a master and a professional advisory committee, Judge Johnson again forbore to take more intrusive remedial action. Judge Johnson indicated in reference to this issue: "Federal Courts are reluctant to assume control of any organization, but especially one operated by a state. This court, always having shared that reluctance, has adhered to a policy of allowing state officials one final opportunity to perform the duties imposed upon them by law. Additionally, since the entry of the interim emergency order of March 2, 1972, defendants have worked diligently to upgrade conditions at Partlow in conformity with court-established deadlines. These factors, combined with defendants' expressed intent that the present order will

be implemented forthwith and in good faith, cause the Court to withhold its decision on the appointment (Wyatt v. Stickney, April 12, 1972)."

The standards promulgated by the Court included 49 standards comprising minimum constitutional standards for adequate habilitation of the mentally retarded. These standards were consensual on the part of the defendants and the plaintiffs. These standards have since been widely accepted; and in fact, integrated into most state and federal regulations governing operation of mental retardation facilities throughout the United States.

In December 1975, a new phase of the Wyatt litigation began when the Court permitted reopening of discovery in order to determine Defendants' compliance with the 1972 Order. In 1977, Plaintiffs again requested appointment of a special master to insure compliance. In October, 1978, a motion was filed by Defendants to seek modification of the original

court standards and on November, 1978, a second motion was filed by the Defendants to modify the composition, duties, and functions of the originally appointed Human Rights Committee.

In November, 1978, a hearing which lasted eight days, was held in Judge Johnson's Court regarding these motions. The Court following the hearing outlined the legal issues before it as follows:

(1) has there been compliance with the minimum constitutional standards of adequate habilitation?

(2) should the court appoint a receiver to insure compliance with the 1972 Order?

(3) should the standards specified in the 1972 order be modified?

Related issues before the court which were related to specific standards, but dominated the preceedings included:

(1) Issues related to setting of projected placement dates for

all clients, regardless if staff felt placement was not feasible in the near future. Testimony on this issue highlighted the more basic question of what role do institutions have in the care and treatment of the retarded.

(2) Issues related to provision of an "enriched environment" rather than a formalized training or education program which would be provided to a select group of residents only after specific safeguards are implemented to insure residents have not benefited from formalized training.

The Court ruled that:

(1) "The hazardous and deplorable conditions which existed at Partlow in 1972 have to some degree been ameliorated. The severe overcrowding has been eliminated. At the same time, the staff has increased, although there are still shortages of trained personnel

in some fields. Concomitantly, the physical conditions have improved. However, the evidence reflects continued serious areas of noncompliance."

(2) The court in January, 1980, appointed Governor Fob James, at the Governor's request, receiver of the Department of Mental Health and dissolved the Court's Human Rights Committee and appointed "court monitors" in their place.

(3) In reference to the motion for modification of the original order filed by the Defendants on October 20, 1978, the court noted only one of the twelve standards which Defendants proposed to change constitute a major change in the content of the standards. This change regarded the "enriched environment" proposed. The court ruled against this ruling stating:

"The constitutional right of each resident to habilitation

which will maximize his human abilities and enhance his ability to cope with his environment would be threatened by the modification proposed by the Defendants."

In reference to community placement of the mentally retarded the Court indicated:

"From the evidence it is clear that there is debate within the profession concerning the beneficial effects of community placement for the severely and profoundly retarded. The Court will not choose sides in this debate, nor should it. In 1972, the Court ordered defendants to implement certain standards only after there had been a finding of widespread constitutional violations. . . . Determining the ideal mode of treatment, or ordering state institutions to implement the best system, is beyond the province of the Court" (Wyatt v. Ireland, October 25, 1979).

Shortly after his appointment as receiver, the Governor detailed a comprehensive plan for changes in the Mental Health system which included substantial construction. Approximately at the same time, the State of Alabama also received $450 million dollars from oil and gas revenues off the Gulf of Mobile.

Approximately one year after the Judge's ruling, a series of motions were again filed by both the Plaintiffs and the Defendants. These issues which were presented to the Court in January 1983, included:

(1) The Plaintiffs' motion for the diversion of General Fund and the $450 million dollars in oil and gas revenues to the Department of Mental Health.

(2) Plaintiffs' motion for removal of James as receiver and appointment of a new receiver.

(3) Defendants' request for termination of the receivership.

(4) Defendants' motion for modificaiton of the Wyatt standards and substitute of Title XIX standards.

Of significance was that the Justice Department and the State of Alabama reached a settlement. This settlement included substitution of Title XIX standards for Wyatt standards and completion of proposed construction.

Judge Myron Thompson, who replaced Judge Frank M. Johnson on the Wyatt case, preceded over the hearing. Only two witnesses for the Plaintiffs and two for the Defendants were each permitted to testify, unlike 1978 when numerous witnesses including myself were called.

To date no decision has been made on the merits of this case. Judge Thompson has ordered that an interim receiver be appointed. The Plaintiffs' choice for receiver was selected; however, this selection was appealed to the Eleventh Circuit Court of Appeals and was overturned.

The Court ruled that appointment of a non-state official as receiver represented an "unprecedented federal court intrusion into the governmental responsibilities of the state." Therefore, less than 3 weeks after his appointment, the Plaintiffs' choice of interim receiver had been replaced by Governor Wallace's designee.

One can only guess at the final outcome of Wyatt. However, after more than 7 years of involvement in Wyatt, I have given up trying to predict outcomes; and when one makes no predictions, there is no need of worrying about the correctness of ones predictions.

However, the present and future posture of the Department of Mental Health will assist us in understanding potential outcomes.

Partlow is no longer the only state facility for the mentally retarded in Alabama. There are now three other regional developmental centers presently throughout the state. A capital construction project is

well under way in which 36 million dollars have been allocated for new construction and renovation of facilities. This includes construction of one new developmental center and significant construction at Partlow which includes tearing down of all multi-story buildings and construction of a new vocational building, an infirmary, new cottages, and renovation of several existing buildings. Additionally, the project includes construction of 17 new group homes to meet Title XIX specifications and construction of 10 work centers in the community.

As compared to 1972 when 2300 residents resided at Partlow, there will be a maximum of 1500 mentally retardation institutional beds available in Alabama. Partlow will house approximately 286 to 486 residents depending on continued outplacement. More than 600 clients reside in community living arrangements and more than 6,000 receive community day services. As compared to national statistics (1979),

approximately 39.8 mentally retarded per 100,000 of the general population are institutionalized in Alabama as compared to 60.3 nationally. Today there are 1465 mentally retarded in Alabama's public residential facilities serving the mentally retarded.

As compared to 1967 when per diems were $3.25 per day, today Alabama is expending $114 per day, more than $36.01 a day over the national average (Scheerenberger, 1981).

In 1967 there was a staff to resident ratio of 3.55 residents to each staff member. Today, Alabama exceeds the national average of 1.64 staff to each resident with a ratio of approximately 1.79 staff to each resident. All of Alabama's facilities are Title XIX certified.

Whatever the outcome, the decision in Wyatt will be of national significance. For more than a decade this litigation has impacted on service to the mentally retarded throughout the nation. The decision

rendered in this case establishing a constitutional right to treatment has had more of an impact on the lives of the mentally retarded than any other single court decision. This case has also entailed issues of equal significance. These have included the balance of power between state and federal government, the right of the judiciary to review and intervene in issues related to professional judgment such as issues related to community placement and federal mandates for legislative appropriation and expenditures of state dollars for the care and treatment of the mentally retarded.